

APPEAL NO. 022558
FILED NOVEMBER 25, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 1, 2002. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the eighth quarter. The appellant (carrier) appealed, arguing that the hearing officer erred in determining that the claimant was entitled to SIBs for the eighth quarter. The claimant responded, urging affirmance.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by complying with Rules 130.102(d)(4) and 130.102(e). The parties stipulated that the claimant sustained a compensable injury on _____; that the qualifying period for the eighth quarter is from March 13 through June 11, 2002; and that the eighth quarter of SIBs is from June 25 through September 23, 2002.

The Appeals Panel has recognized that a claimant may satisfy the good faith requirement under a hybrid theory. Texas Workers' Compensation Commission Appeal No. 002428, decided December 1, 2000, cited Texas Workers' Compensation Commission Appeal No. 001877, decided September 19, 2000, noting that a claimant could satisfy the good faith requirement by demonstrating that he or she had no ability to work for part of the qualifying period and by conducting a good faith job search in the other part of the qualifying period. However, in order to prevail, the claimant must produce evidence that satisfied the requirements of Rule 130.102(d)(4) for the period of time that no ability to work was asserted and evidence that meets the criteria of Rule 130.102(e) for that period of time wherein a good faith job search was claimed.

The hearing officer was persuaded by the claimant's testimony that he had no ability to work during the 11th week of the qualifying period in dispute, because he developed an allergic contact dermatitis/infection in his right leg and needed to remove his prosthetic brace to treat the infection. The claimant testified that without the prosthetic brace, he was unable to stand or walk. The hearing officer determined that the claimant had "no ability to work due to a serious episode of contact dermatitis" during one week of the qualifying period in dispute. Also, medical records that establish that the claimant had recurrent problems with his dermatitis support the hearing officer's determination. Dr. S report dated January 31, 2001, states that "because of the problems with skin breakdown in his right leg due to irritation from his ankle/foot orthotic...the patient will be unable to return to work until this orthotic is available. . . ." A

Work Status Report (TWCC-73) by Dr. S dated March 18, 2002, indicates that the claimant "Must wear splint/cast at work."

The requirements of Rule 130.102(e) are met by the claimant's good faith effort to find employment commensurate with his abilities during the qualifying period in dispute. The carrier contends that one job search per week does not meet the requirements of Rule 130.102(e). We disagree. The factors listed in Rule 130.102(e)(1) through (11) are factors that the hearing officer is to consider in determining good faith. Rule 130.102(e) does not require a specific number of job searches per week during the qualifying period in dispute. Nothing in our review of the record demonstrates that the hearing officer did not consider the requirements of Rule 130.102(e) in his evaluation of good faith effort determination. Good faith effort is a factual determination for the hearing officer to resolve.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). The Appeals Panel, an appellate reviewing tribunal, will not disturb the challenged factual determinations of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Veronica Lopez
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge